

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DIVISION

AERITAS, LLC,

Plaintiff

v.

SUBWAY SANDWICH SHOPS INC.,
SUBWAY SUBS, INC., FRANCHISE
WORLD HEADQUARTERS, LLC
d/b/a SUBWAY RESTAURANTS
d/b/a SUBWAY, and DOCTOR'S
ASSOCIATES, INC.

Defendants

Case No. 6:20-cv-00102

JURY TRIAL DEMANDED

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff Aeritas, LLC (“Aeritas” or “Plaintiff”) files this Complaint for patent infringement against Subway Sandwich Shops Inc., Subway Subs, Inc., Franchise World Headquarters, LLC d/b/a Subway Restaurants d/b/a Subway, and Doctor's Associates, Inc., and alleges as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under 35 U.S.C. § 1 *et seq.*

PARTIES

2. Aeritas is a limited liability company organized and existing under the laws of the State of Texas with its principal place of business in Dallas, Texas.

3. Upon information and belief, Subway, Subway Sandwich Shops, Inc. (“SSSI”) is a corporation organized and existing under the laws of the State of Connecticut, with their principal place of business at 325 Sub Way, Milford, Connecticut 06461.

4. Upon information and belief, Subway, Subway Subs, Inc. (“SSI”) is a corporation organized and existing under the laws of the State of Delaware, with their principal place of business at 325 Sub Way, Milford, Connecticut 06461.

5. Upon information and belief, Subway, Franchise World Headquarters, LLC d/b/a Subway Restaurants d/b/a Subway (“FWH”) is a limited liability company organized and existing under the laws of the State of Connecticut, with their principal place of business at 325 Sub Way, Milford, Connecticut 06461.

6. Upon information and belief, Subway, Doctor’s Associates, Inc. (“DAI”) is a corporation organized and existing under the laws of the State of Florida, with their principal place of business at 700 South Royal Poinciana Boulevard, Suite 500, Miami Springs, Florida 33166.

7. Defendants SSSI, SSI, FWH, and DAI are referred to collectively herein as “Subway” or “Defendants.”

JURISDICTION AND VENUE

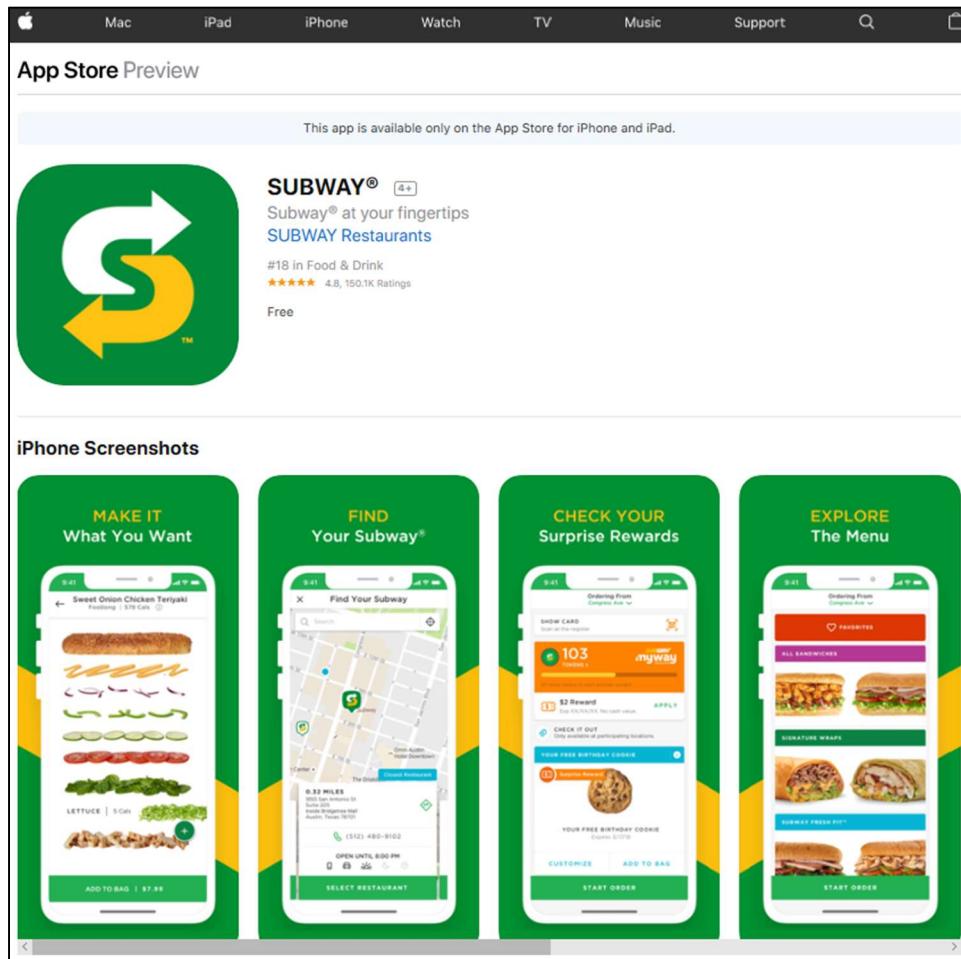
8. This Court has original jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

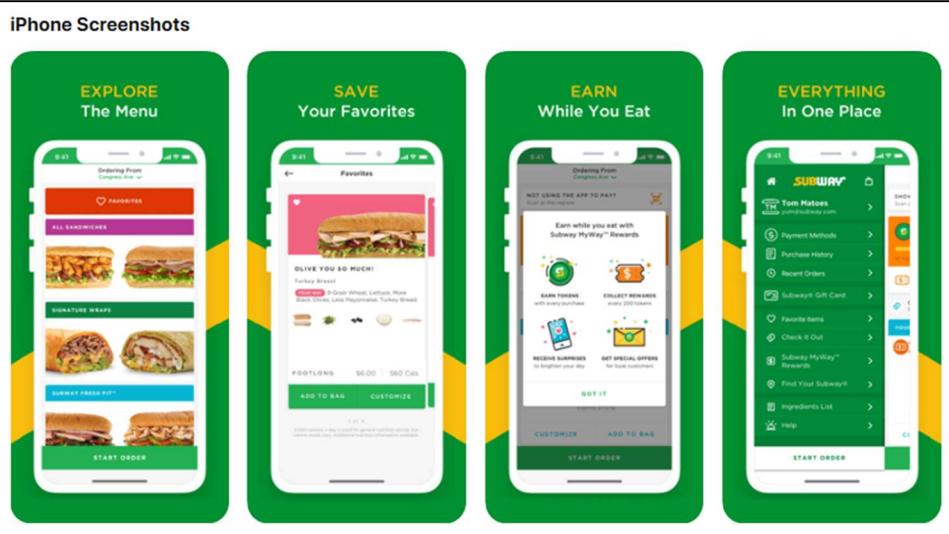
9. Upon information and belief, Subway is subject to personal jurisdiction of this Court based upon it having regularly conducted business, including the acts complained of herein, within the State of Texas and/or deriving substantial revenue from goods and services provided to individuals in Texas and in this District.

10. Venue is proper in this District under 28 U.S.C. § 1400 because Subway has committed acts of infringement and has regular and established places of business in this judicial district.

OVERVIEW OF THE SUBWAY APP

11. Subway provides for its customers use the Subway App, which is available for use with iOS and Android devices:





Hungry? With the SUBWAY® App you can order ahead to access Express Pickup, get digital coupons, earn on purchases, scan to pay and more -- all in seconds!

EARN: With Subway MyWay™ Rewards built right into the app, you can earn on every purchase, plus get Surprise Rewards, exclusive deals and more. Consider it a "token" of our appreciation for you!

SAVE: Get digital deals sent right to your app, personalized just for you.

CUSTOMIZE: Like extra olives? Us too. Customize your sandwich just like you would in the restaurant. Swap your cheese, pick your toppings, toast your bread – the opportunities are endless.

TOP IT OFF: Not sure what to add to your sandwich? Leave it to the experts. Add a sandwich with suggested toppings directly to your bag - keeping decisions low but deliciousness high.

SAVE A FAVE: Have a "usual"? Don't waste time digging through past orders. Name and save your fave to make reordering a snap.

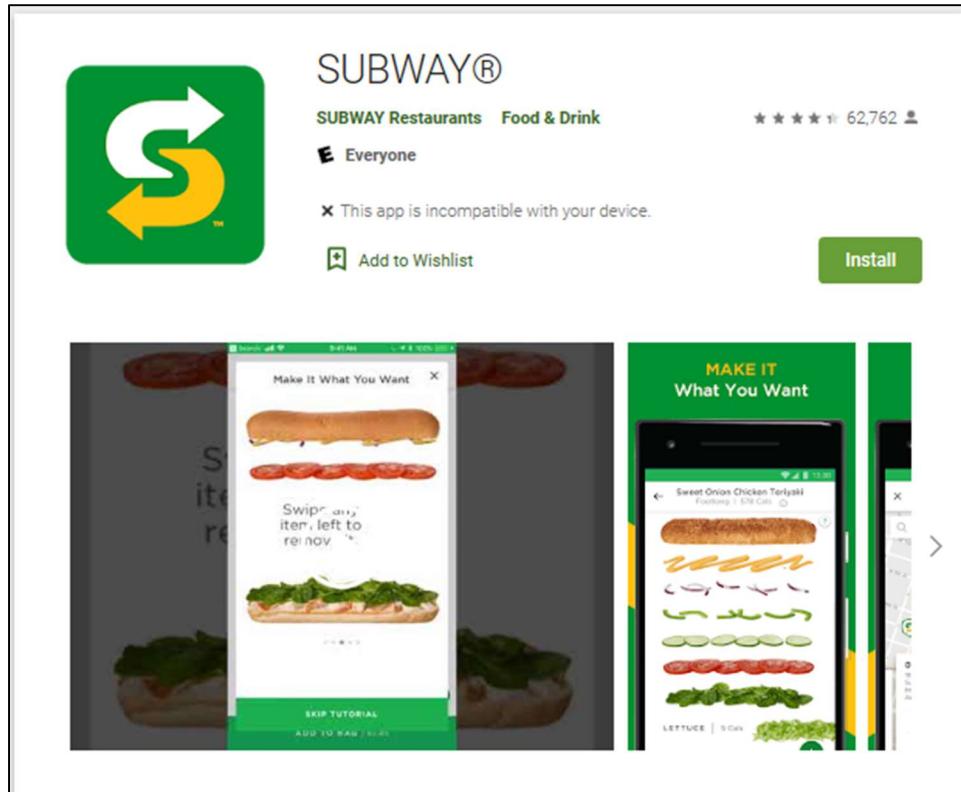
PAY: No wallet? No problem. Pay for your food ahead of time through the App or in-store using your mobile wallet.

FIND: On-the-go? We got you. Find a SUBWAY® Restaurant near you, get directions, view hours and other things you want to know – like if the restaurant has a drive thru or serves breakfast.

What are you waiting for? Download the App and start eating and earning!

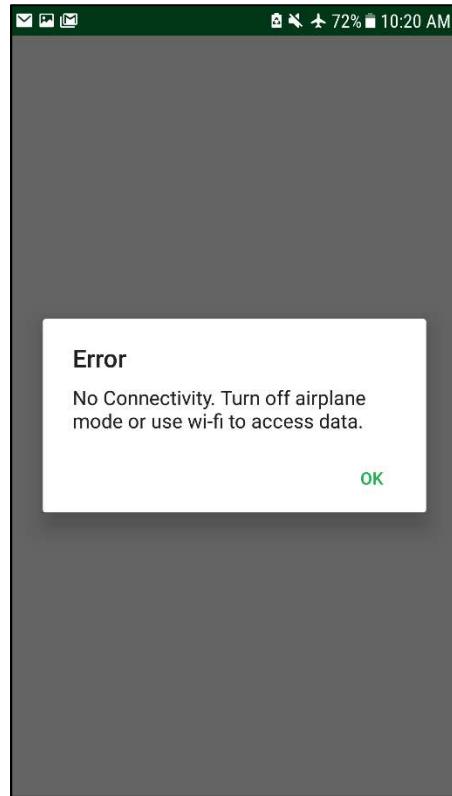
For any questions, you can contact us here: AppFeedback@subway.com
Mobile ordering is only available at Participating restaurants.

<https://apps.apple.com/us/app/subway/id901941015>

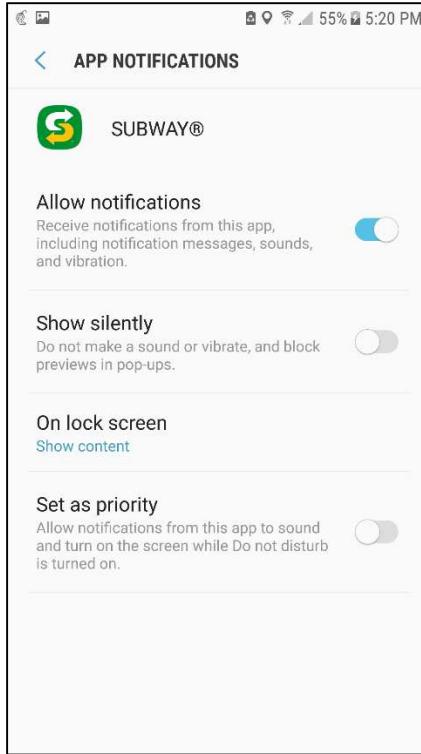


https://play.google.com/store/apps/details?id=com.subway.mobile.subwayapp03&hl=en_US

12. The Subway App relies on a server, with a processor and software, to function.



13. The Subway App provides an indication of permission to provide the mobile device a notification with an associated notification criterion.



- If the device is running Android 6.0 (API level 23) or higher, and the app's `targetSdkVersion` is 23 or higher, the app requests permissions from the user at run-time. The user can revoke the permissions at any time, so the app needs to check whether it has the permissions every time it runs. For more

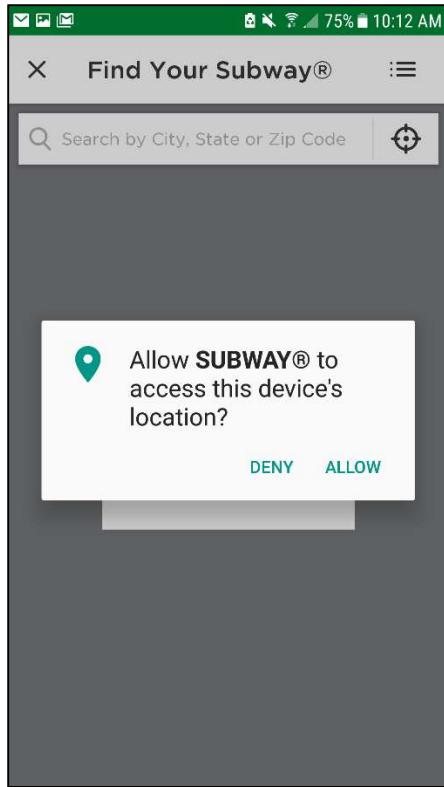
<https://developer.android.com/guide/topics/permissions/requesting.html>

As of API level 23, the following permissions are classified as `PROTECTION_NORMAL`:

- `ACCESS_LOCATION_EXTRA_COMMANDS`
- `ACCESS_NETWORK_STATE`
- `ACCESS_NOTIFICATION_POLICY`
- `ACCESS_WIFI_STATE`

<https://developer.android.com/guide/topics/permissions/normal-permissions.html>

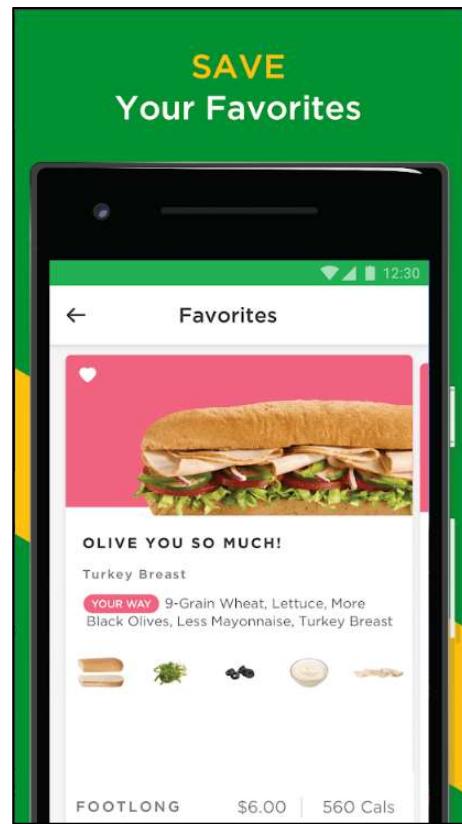
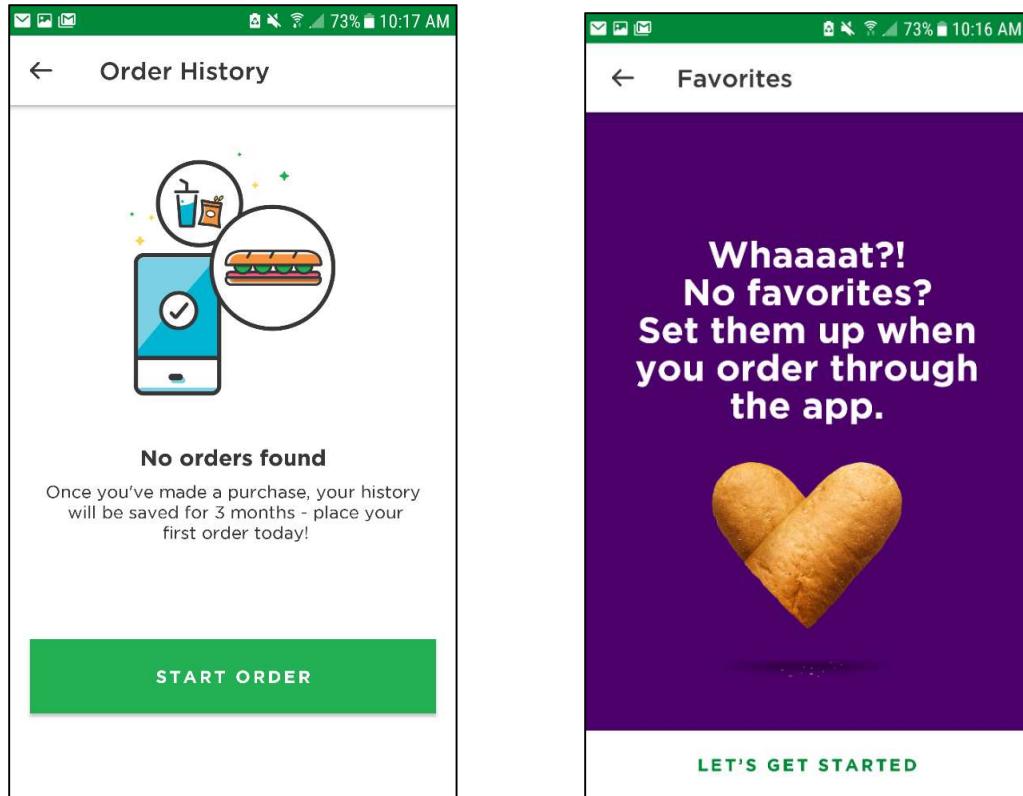
14. The Subway App requests permission to access the location of the user's device.



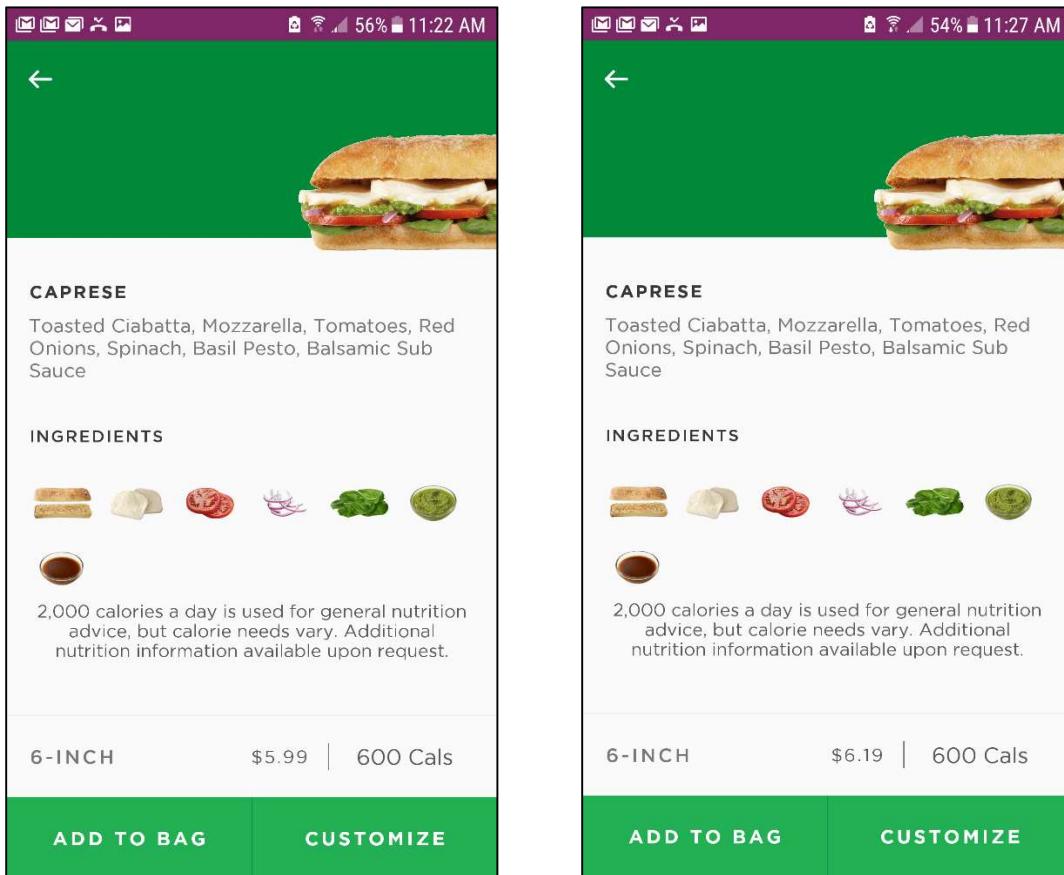
FIND: On-the-go? We got you. Find a SUBWAY® Restaurant near you, get directions, view hours and other things you want to know – like if the restaurant has a drive thru or serves breakfast.

https://play.google.com/store/apps/details?id=com.subway.mobile.subwayapp03&hl=en_US

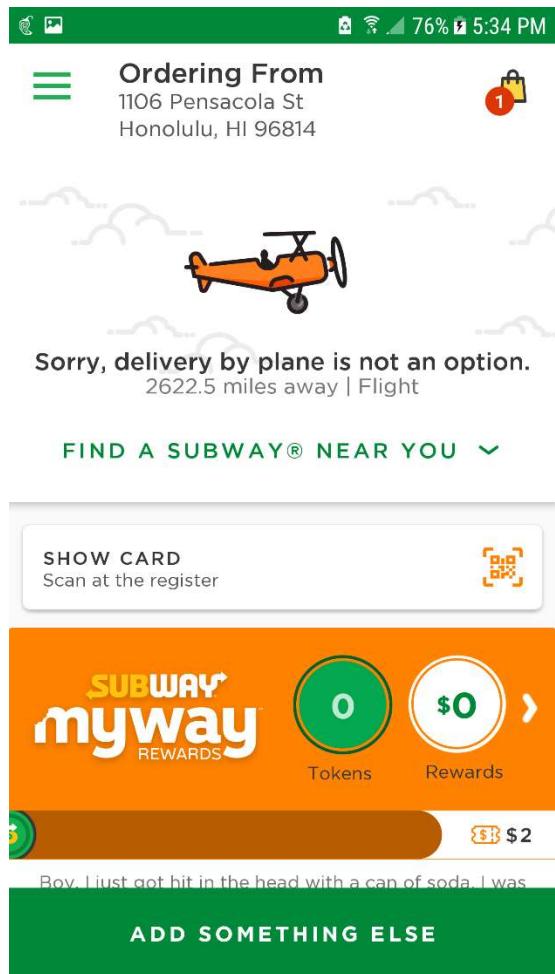
15. The Subway App stores data on items the consumer has expressed interest.



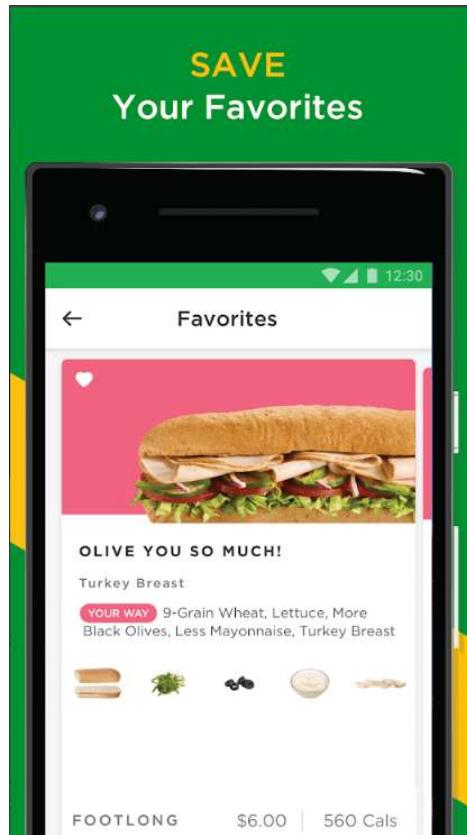
16. The Subway server receives results from a database search and delivers product information, including price, which may differ from store to store.



17. When location access is enabled, upon attempting to order from a Subway location too far away, the user's device receives an in-app visual notification indicating the location is too far away.

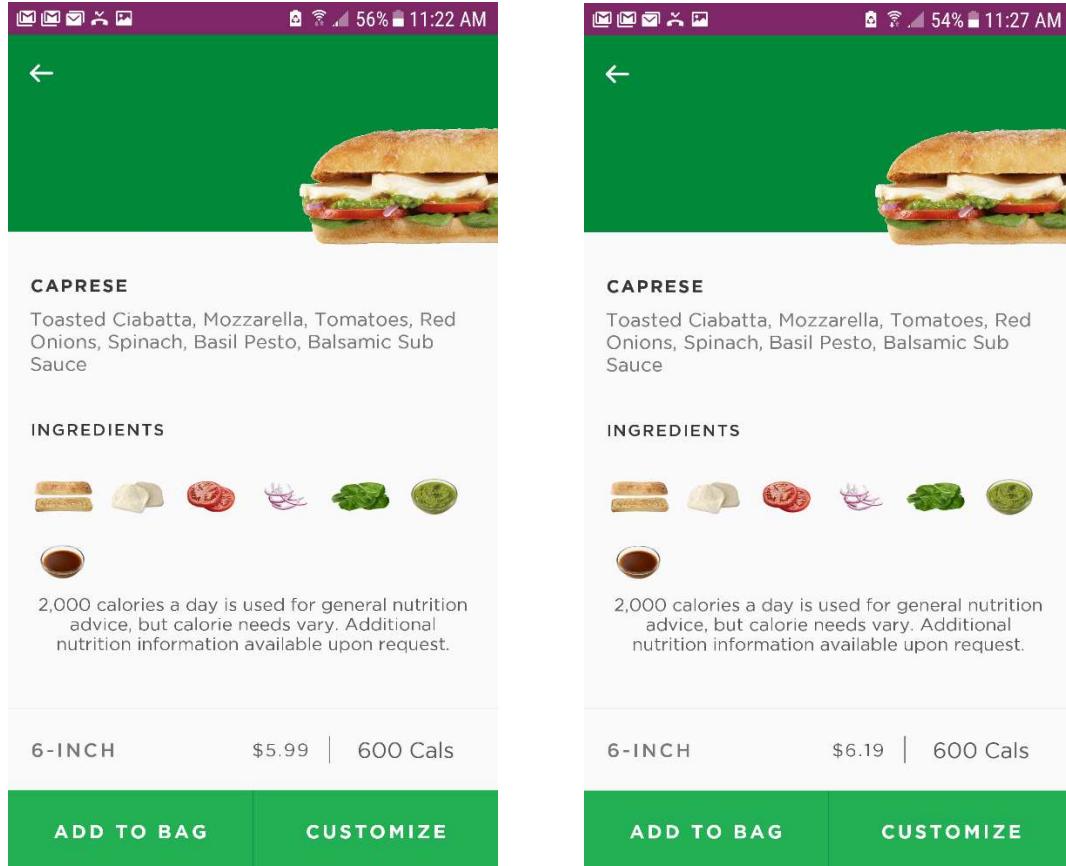


18. When a user views the favorites or recent orders menu, Subway initiates a search for nearby stores currently stocking the product and what the price of the product is



SAVE A FAVE: Have a "usual"? Don't waste time digging through past orders. Name and save your fave to make reordering a snap.

19. Subway receives results from the database search and delivers the product information, including price, which may differ from store to store.



COUNT I
(Infringement of U.S. Patent No. 8,055,285)

20. Aeritas incorporates paragraphs 1 through 19 as though fully set forth herein.

21. Plaintiff is the owner, by assignment, of U.S. Patent No. 8,055,285 (the “285 Patent”), entitled MIXED-MODE INTERACTION, which issued on November 8, 2011. A copy of the ’285 Patent is attached as Exhibit PX-285.

22. The ’285 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

23. Subway has been and are now infringing one or more claims of the ’285 Patent under 35 U.S.C. § 271 by making and using the Subway App with users’ iOS and Android devices and the Subway server in the United States without authority.

24. Subway has also infringed the '285 Patent by encouraging users of the Subway App to use the user's iOS or Android devices with the Subway App to practice the claims of the '285 Patent.

25. Claim 1 recites:

1. A method, comprising:
 - at a first time, receiving and storing an input in a user profile in a database, the input comprising consumer interest data;
 - at a second time distinct from the first time, obtaining data identifying a current location of the mobile communication device;
 - based on the input stored in the user profile and the current location of the mobile communication device, initiating a search to locate information pertinent to the input;
 - receiving results derived from the search; and
 - in response to the input and the search, delivering, by a notification server, information to the mobile communications device.

26. More particularly, Subway infringes at least claim 1 of the '285 Patent. Subway receives and stores an input in a user profile in a database, the input comprising consumer interest data. At a second time, data identifying a current location of the mobile communications device on which the Accused Instrumentality is installed is obtained. Based on the input and location, Subway performs a search to locate pertinent information (e.g., nearby stores) and receive the results of such search, distance from

mobile device. Subway then provides the information to the mobile communications device.

27. Aeritas has been damaged by Subway's infringing activities.

COUNT II
(Infringement of U.S. Patent No. 9,390,435)

28. Aeritas incorporates paragraphs 1 through 19 as though fully set forth herein.

29. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,390,435 (the "435 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the '435 Patent is attached as Exhibit PX-435.

30. The '435 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

31. Subway has been and are now infringing one or more claims of the '435 Patent under 35 U.S.C. § 271 by making and using the Subway App with users' iOS and Android devices and the servers in the United States without authority.

32. Subway has also infringed the '435 Patent by encouraging users of the Subway App to use the user's iOS or Android devices with the Subway App to practice the claims of the '435 Patent.

33. Claim 1 recites:

1. Apparatus, comprising:
 - a processor;
 - computer memory holding computer program instructions to:

receive first data indicating a permission to provide a mobile device user a notification, the notification having an associated notification criteria; at a given time, determine a location of a mobile device; based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert; receive second data as a result of an input being received at the mobile device following the notification; retrieve information associated with the input and the determined location of the mobile device; and provide to the mobile device a response to the input, the response based on the retrieved information.

34. More particularly, Subway infringes at least claim 1 of the '435 Patent. On information and belief, Subway employs a processor and computer memory holding computer program instructions to perform the functions described herein. Subway receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Subway determines the location of the mobile device. Based on the location and notification criteria, Subway provides at least a visual alert notification. Subway receives second data as a result of an input being

received at the mobile device, retrieves information associated with the input and location, and provides responsive information to the mobile device.

35. Aeritas has been damaged by Subway's infringing activities.

COUNT III
(Infringement of U.S. Patent No. 9,888,107)

36. Aeritas incorporates paragraphs 1 through 19 as though fully set forth herein.

37. Plaintiff is the owner, by assignment, of U.S. Patent No. 9,888,107 (the "107 Patent"), entitled MIXED-MODE INTERACTION, which issued on February 6, 2018. A copy of the '107 Patent is attached as Exhibit PX-107.

38. The '107 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

39. Subway has been and are now infringing one or more claims of the '107 Patent under 35 U.S.C. § 271 by making and using the Subway App with users' iOS and Android devices and the Subway servers in the United States without authority.

40. Subway has also infringed the '107 Patent by encouraging users of the Subway App to use the user's iOS or Android devices with the Subway App to practice the claims of the '107 Patent.

41. Claim 5 recites:

5. Apparatus, comprising:
a processor;
computer memory holding computer program instructions to:
receive first data indicating a permission to provide a mobile device
user a notification, the notification having an associated

notification criteria;
at a given time, determine a location of a mobile device;
based at least in part on a determined location of the mobile device
and the notification criteria, to provide to the mobile device
the notification, the notification being associated at the
mobile device with one of: an audible, visual and tactile alert;
receive second data as a result of an input being received at the
mobile device following the notification;
retrieve information associated with the input and the determined
location of the mobile device; and
provide to the mobile device a response to the input, the response
based on the retrieved information;
wherein the computer program instructions comprise a rules engine
that comprises first and second components, a first
component that evaluates the notification criteria, and a
second component that executes notification rules.

42. More particularly, Subway infringes at least claim 5 of the '107 Patent. On information and belief, Subway employs a processor and computer memory holding computer program instructions to perform the functions described herein. Subway receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Subway determines the location of the mobile device. Based on the location and notification criteria, Subway provides at least a visual alert notification. Subway receives second data as a result of an input being

received at the mobile device, retrieves information associated with the input and location, and provides responsive information to the mobile device. On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

43. Aeritas has been damaged by Subway's infringing activities.

COUNT IV
(Infringement of U.S. Patent No. 10,362,160)

44. Aeritas incorporates paragraphs 1 through 19 as though fully set forth herein.

45. Plaintiff is the owner, by assignment, of U.S. Patent No. 10,362,160 (the "160 Patent"), entitled MIXED-MODE INTERACTION, which issued on July 23, 2019. A copy of the '160 Patent is attached as Exhibit PX-160.

46. The '160 Patent is valid, enforceable, and was duly issued in full compliance with Title 35 of the United States Code.

47. Subway has been and are now infringing one or more claims of the '160 Patent under 35 U.S.C. § 271 by making and using the Subway App with users' iOS and Android devices and the Subway servers in the United States without authority.

48. Subway has also infringed the '160 Patent by encouraging users of the Subway App to use the user's iOS or Android devices with the Subway App to practice the claims of the '160 Patent.

49. Claim 1 recites:

1. Apparatus, comprising:
 - a processor;
 - computer memory holding computer program instructions to:
 - receive first data indicating a permission to provide a mobile device

user a notification, the notification having an associated notification criteria;

at a given time, receive information identifying a determined location of a mobile device;

based at least in part on a determined location of the mobile device and the notification criteria, to provide to the mobile device the notification, the notification being associated at the mobile device with one of: an audible, visual and tactile alert;

receive second data as a result of an input being received at the mobile device following the notification;

retrieve information associated with the input and the determined location of the mobile device; and

provide to the mobile device a response to the input, the response based on the retrieved information.

50. More particularly, Subway infringes at least claim 1 of the '160 Patent. On information and belief, Subway employs a processor and computer memory holding computer program instructions to perform the functions described above. Subway receives data indicating permission to provide a notification to a mobile device user in accordance with notification criteria. At a given time, Subway determines the location of the mobile device. Based on the location and notification criteria, Subway provides at least a visual alert notification, retrieves information associated with the input and location, and provides responsive information to the mobile device.

On information and belief, the program instructions include first and second components of a rules engine to evaluate notification criteria and execute notification rules.

51. Aeritas has been damaged by Subway's infringing activities.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court enter judgment against Defendant:

1. declaring that the Defendant has infringed the '285, the '435, the '107, and the '160 Patents;
2. awarding Plaintiff its damages suffered as a result of Defendant's infringement of the '285, the '435, the '107, and the '160 Patents;
3. awarding Plaintiff its costs, attorneys' fees, expenses, and interest; and
4. granting Plaintiff such further relief as the Court finds appropriate.

JURY DEMAND

Plaintiff demands trial by jury, Under Fed. R. Civ. P. 38.

Dated: February 11, 2020 Respectfully submitted,

/s/ Raymond W. Mort, III
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AERITAS, LLC**